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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,141	02/15/2002	Wayne E. Conrad	88630.213CIP	9852
24395	7590	02/05/2009		
WILMERHALE/DC 1875 PENNSYLVANIA AVE., NW WASHINGTON, DC 20006				
EXAMINER				
CHORBAJ, MONZER R				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
02/05/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

teresa.carvalho@wilmerhale.com

michael.mathewson@wilmerhale.com

deborah.lee@wilmerhale.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/076,141

Applicant(s)

CONRAD ET AL.

Examiner

MONZER R. CHORBAJI

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 January 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16 and 18-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

Continuation of 13. Other:

Response to Arguments

On pages 2-5 of the Remarks section; Applicant argues that Meston does not teach or suggest a baffle angle between 22.25 and 27.5 degrees; that Applicant need not show criticality where the art of record teaches completely away from the limitations of the claimed invention; that Meston teaches a mobile gas scrubbing apparatus having low baffle angles and teaches away from higher baffle angles; that Meston apparatus would not operate effectively for its intended purpose if modified to the higher baffle angles as claimed by Applicants; that the examiner cites to no support in the art of record for the contention that one of ordinary skill in the art would want to design a non-portable mixing device and that Meston criticizes non-portable systems; and that no motivation has been offered by the examiner on this record, nor can it be, for one of ordinary skill in the art to use higher angles.

Meston teaches that his apparatus can be used in stationary or mobile environments (col.6, lines 10-12) and that when used in mobile applications, the apparatus should have relatively small dimensions (col.1, lines 20-21) where one of ordinary skill in the art wanting to design a non-portable mixing device would realize based upon Meston guidance that the number of baffles as well as their angle ranges are to be modified (made larger than the disclosed range) for an apparatus intended to be not loaded on trucks and would also recognize based upon Meston teachings that as the height of the contact chamber is manipulated so does the number and angles of the baffles. As such determining the proper range of the upwardly inclined angles is considered well within the purview of the skilled artisan as a matter of routine experimentation. Only the expected results are obtained. Applicant is also reminded that portable need not necessarily equate with small. Anything is portable, given the right moving equipment.

In addition, the disclosure as a whole does not provide any criticality regarding ranges for angles. See pages 2-3, where that any angle value meets the requirements of the invention as long as it forms eddies and the value of the angle depends on the velocities of the fluid to be contacted and the rate of flow of the fluid to be introduced. Meston gives specific teaching to one of ordinary skill in the art on the adjustment of baffle angle. See column 5, lines 32-50. These teachings would encourage one of ordinary skill in the art to experiment on baffle angle until achieving the optimum contact time for a given application. One of ordinary skill in the art upon reading the disclosure would realize determining the desired angle values is a matter of routine experimentation due to lack of teaching unexpected results with certain critical angle values.